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Paper No. 10

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MAR 7 2003

In re Application of:  
FUNAYA *et al.* : DECISION  
Application No. 09/730,849 : ON  
Filed: December 07, 2000 : PETITION  
Attorney Docket No. Q62153 : ✓

This is a decision on the petition filed August 19, 2002, and supplemented on February 04, 2003, to withdraw the holding of abandonment of the above-identified application. No petition fee is required.

The petition is **GRANTED**.

✓ The application was held abandoned for failure to timely respond to the an Office action mailed on December 10, 2001. In the absence of a timely filed response, the application would have been abandoned by operation of law at midnight on March 11, 2002.

Petitioner contends that the above-identified Office action was not received. To support the petition, petitioner states that the Office action was not received and that a search of the file jacket and docket records indicates that the Office action was not received. A copy of petitioner's docket record was submitted with the petition.

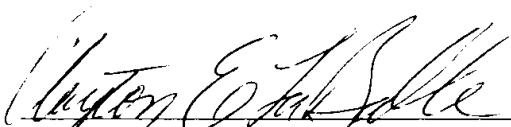
A review of the written record indicates no irregularity in the mailing of the Office action, and in the absence of any irregularity there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the Office action was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c).

Decision on Petition

The petition and supporting evidence satisfy the above-stated requirements. Accordingly, the petition is **granted**.

The application file is being forwarded to the Technology Center 2800 support staff for remailing the Office action dated December 10, 2001. The shortened statutory period for response set therein will be reset to run three months from the date the Office action is remailed.

Inquiries regarding this decision should be directed to Clayton E. LaBalle at (703) 308-0519.



Clayton E. LaBalle, Special Programs Examiner  
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